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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patrice RICHARD, et al.

Docket No: Q94528

Appln. No.: 10/577,428

Group Art Unit: 3736

Confirmation No.: 4756

Examiner: Not Yet Assigned

Filed: April 27, 2006

For: DEVICE FOR REMOVING AND/OR INJECTING BONE MARROW AND SYSTEM
COMPRISING SAID DEVICE

SUBMISSION OF INTERNATIONAL
PRELIMINARY EXAMINATION REPORT (IPER)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

For the Examiner's convenience, enclosed herewith is a copy of the English translation of the International Preliminary Examination Report. It is noted that the one reference cited in the International Search Report was previously submitted to the U.S. Patent and Trademark Office with an Information Disclosure Statement on April 27, 2006, and are therefore not enclosed herewith.

Respectfully submitted,

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WASHINGTON OFFICE

23373

CUSTOMER NUMBER

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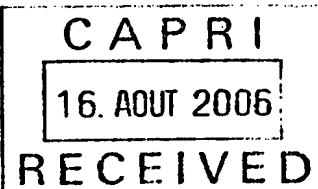
PCT

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(règles 44bis.3.c) et 72.2 du PCT)

Destinataire :

CAPRI
33, rue de Naples
F-75008 Paris
FRANCE



Date d'expédition (jour/mois/année) 03 août 2006 (03.08.2006)	NOTIFICATION IMPORTANTE
Référence du dossier du déposant ou du mandataire PRAX 3 PCT	
Demande internationale n° PCT/FR2004/050536	Date du dépôt international (jour/mois/année) 26 octobre 2004 (26.10.2004)
Déposant PRAXCELL etc	

1. Transmission de la traduction au déposant.

- ☐ Le Bureau international transmet ci-joint copie de la traduction en langue anglaise du rapport préliminaire international sur la brevetabilité (chapitre I).
- ☒ Le Bureau international transmet ci-joint copie de la traduction en langue anglaise du rapport préliminaire international sur la brevetabilité (chapitre II).

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3. Rappel concernant la traduction dans la ou l'une des langues officielles de l'office ou des offices élus.

Il est rappelé au déposant que, lorsqu'une traduction de la demande internationale doit être remise à un office élu, cette traduction doit comporter la traduction de toute annexe du rapport préliminaire international sur la brevetabilité (chapitre II).

Il appartient au déposant d'établir la traduction en question et de la remettre directement à chaque office élu intéressé dans le délai applicable (règle 74.1). Voir le volume II du *Guide du déposant du PCT* pour de plus amples renseignements.

Bureau international de l'OMPI 34, chemin des Colombettes 1211 Genève 20, Suisse	Fonctionnaire autorisé Beate Giffo-Schmitt
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TRANSLATION

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference PRAX 3 PCT	FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. PCT/FR2004/050536	International filing date (day/month/year) 26.10.2004	Priority date (day/month/year) 30.10.2003
International Patent Classification (IPC) or national classification and IPC A61B17/34		
Applicant PRAXCELL		

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 7 sheets, including this cover sheet.

3. This report is also accompanied by ANNEXES, comprising:

a. ☒ (sent to the applicant and to the International Bureau) a total of 3 sheets, as follows:

☒ sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).

☐ sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.

b. ☐ (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).

4. This report contains indications relating to the following items:

<input checked="" type="checkbox"/>	Box No. I	Basis of the report
<input checked="" type="checkbox"/>	Box No. II	Priority
<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
<input type="checkbox"/>	Box No. IV	Lack of unity of invention
<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
<input checked="" type="checkbox"/>	Box No. VI	Certain documents cited
<input type="checkbox"/>	Box No. VII	Certain defects in the international application
<input type="checkbox"/>	Box No. VIII	Certain observations on the international application

Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/FR2004/050536

Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language _____ which is the language of a translation furnished for the purposes of:
- ☐ international search (Rule 12.3 and 23.1(b))
- ☐ publication of the international application (Rule 12.4)
- ☐ international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the elements of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:
- ☐ the international application as originally filed/furnished
- ☒ the description:
- pages 1-11 _____ as originally filed/furnished
- pages* _____ received by this Authority on _____
- pages* _____ received by this Authority on _____
- ☒ the claims:
- nos. _____ as originally filed/furnished
- nos.* _____ as amended (together with any statement) under Article 19
- nos.* 1-23 _____ received by this Authority on 28.12.2005 with letter
- nos.* _____ received by this Authority on of 27.12.2005
- ☒ the drawings:
- sheets 1/3-3/3 _____ as originally filed/furnished
- sheets* _____ received by this Authority on _____
- sheets* _____ received by this Authority on _____
- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (specify): _____
- ☐ any table(s) related to sequence listing (specify): _____
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (specify): _____
- ☐ any table(s) related to sequence listing (specify): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/FR2004/050536

Box No. II

Priority

1. ☒ This report has been established as if no priority had been claimed due to the failure to furnish within the prescribed time limit the requested:
 - ☒ copy of the earlier application whose priority has been claimed (Rule 66.7(a)).
 - ☐ translation of the earlier application whose priority has been claimed (Rule 66.7(b)).
2. ☐ This report has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rule 64.1). Thus for the purposes of this report, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1. Statement			
Novelty (N)	Claims	1-23	YES
	Claims		NO
Inventive step (IS)	Claims	1-23	YES
	Claims		NO
Industrial applicability (IA)	Claims	1-23	YES
	Claims		NO

2. Citations and explanations (Rule 70.7)

1. Reference is made to the following document:

D1: FR 2 170 919 A (VINNITSKY MED IN)
21 September 1973 (1973-09-21).

2. INDEPENDENT CLAIM 1

Document D1 (figures 1-5), which is considered to be the most relevant prior art, discloses a device for collecting and/or injecting bone marrow, including:

- a gripping area (3, 11);
- a needle (7, 8) that has at least one side port (10) and is attached to a needle holder (11); and
- a protective sleeve (1) that at least partially encases said needle and is movably mounted relative thereto between a sealing position in which said at least one side port is sealed and an open position in which said at least one side port is open (page 3, lines 34-36; page 4, lines 19-22).

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

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Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

The subject matter in claim 1 differs from the above in that the needle holder includes receiving means that are engageable with protective sleeve-securing means so that said sleeve can be secured in the sealing and the open positions thereof.

It follows that the subject matter of claim 1 is novel (PCT Article 33(2)).

The problem that the present invention is intended to solve can therefore be considered to be that of enhancing device stability in the open position thereof.

The solution to this problem, as proposed in claim 1 of the present application, is considered to involve an inventive step (PCT Article 33(3)) because the prior art does not disclose receiving means that are engageable with securing means so that the protective sleeve can be secured in the open position thereof, nor can such a solution be derived in an obvious manner from said prior art.

3. Claims 2-23 include claim 1 and, as such, therefore also fulfil the PCT requirements of novelty and inventive step.

Observations

1. PCT Article 6

- 1.1 The references in claims 4-6 are erroneous.

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

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Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

- 1.2 Independent claims 11 and 20 are not clear because they contain only a reference to the claimed collection or injection device and do not disclose the technical features thereof.
2. Certain published documents cited in the international search report describe the subject matter in claim 1.
- 3 Contrary to the requirements of PCT Rule 5.1(a)(ii), the description does not indicate the relevant prior art disclosed in document D1, nor does it cite said document.

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

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Box No. VI Certain documents cited

1. Certain published documents (Rule 70.10)

Application No.
Patent No.Publication date
(day/month/year)Filing date
(day/month/year)Priority date (valid claim)
(day/month/year)

2. Non-written disclosures (Rule 70.9)

Kind of non-written disclosure

Date of non-written disclosure
(day/month/year)Date of written disclosure
referring to non-written disclosure
(day/month/year)